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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ELISSA M. ROBERTS, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

BLOOM ENERGY CORPORATION, et al.,

Defendants.

Lead Case No. 4:19-cv-02935-HSG

CLASS ACTION

**STIPULATION AND ORDER
REGARDING SCHEDULE FOR
AMENDING COMPLAINT AND
DEFENDANTS' RESPONSE**

Assigned to: Hon. Haywood S. Gilliam, Jr.

Pursuant to Civil Local Rule 7-12, the parties to this action stipulate to and respectfully request the Court to enter the schedule below regarding amendment of the current complaint and responses thereto in light of certain recent developments.

WHEREAS:

1. On May 28, 2019, plaintiff Elissa M. Roberts filed a federal securities class action against defendants Bloom Energy Corporation, KR Sridhar, Randy Furr, L. John Doerr, Scott Sandell, Eddy Zervigon, Colin L. Powell, Peter Teti and Mary K. Bush and Kelly A. Ayotte (collectively, the "Defendants") (ECF No. 1).

2. On September 3, 2019, following the briefing of lead plaintiff motions, the Hon. William H. Orrick appointed James Everett Hunt as Lead Plaintiff ("Plaintiff") and Levi & Korsinsky,

1 LLP as Lead Counsel (ECF No. 39).

2 3. On November 4, 2019, Plaintiff filed the Amended Complaint for Violations of the
3 Federal Securities Laws (the “Amended Complaint”) (ECF No. 49). Plaintiff’s Amended Complaint
4 alleges violations of the federal securities laws under Sections 11 and 15 of the Securities Act of 1933
5 and Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and names, in addition to the
6 original Defendants, the following entities as additional defendants in a claim under Section 11 of the
7 Securities Act of 1933: J.P. Morgan Securities, LLC, Morgan Stanley & Co. LLC, Credit Suisse
8 Securities (USA) LLC, KeyBanc Capital Markets Inc., Merrill Lynch, Pierce, Fenner & Smith
9 Incorporated, Cowen & Company, LLC, HSBC Securities (USA) Inc., Oppenheimer & Co. Inc.,
10 Raymond James & Associates, Inc., and Robert W. Baird & Co. Incorporated (the “Underwriter
11 Defendants”).

12 4. Plaintiff alleges that Defendants and the Underwriter Defendants violated the above-
13 cited federal securities laws between July 25, 2018, the date of Bloom Energy’s initial public offering,
14 and September 16, 2019. The Class Period in the Amended Complaint is July 25, 2018 through and
15 including September 16, 2019.

16 5. Defendants and the Underwriter Defendants have not yet responded to Plaintiff’s
17 Amended Complaint. Pursuant to the parties’ December 27, 2019 scheduling stipulation (Dkt. No.
18 101) and the Court’s December 30, 2019 order granting that stipulation (Dkt. No. 102), Plaintiff is
19 required to advise Defendants within 14 days of receiving a decision on his Motion to Limit Scope of
20 Confidentiality Agreement (ECF No. 44) whether he will amend the Amended Complaint or stand on
21 the current Amended Complaint. Also pursuant to the stipulation and related order, when Plaintiff so
22 advises Defendants, this will trigger obligations on the part of Plaintiff to amend the Amended
23 Complaint or Defendants and the Underwriter Defendants to respond to the Amended Complaint
24 within specified periods.

25 6. The Court heard argument on Plaintiff’s Motion to Limit Scope of Confidentiality
26 Agreement on February 13, 2020 and has taken the matter under submission.

27 7. On February 12, 2020, Bloom Energy issued a press release providing an update on the
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1 timing of its fourth quarter and full year 2019 earnings report and announcing that it will restate its
2 financial statements for certain periods when it issues its Form 10-K on or before March 16, 2020.

3 8. Plaintiff has informed the Defendants and Underwriter Defendants that it intends to
4 amend the Amended Complaint to include the information in Bloom Energy's Form 8-K and
5 information to be disclosed by Bloom Energy in its March 2020 Form 10-K relating to *inter alia*
6 Bloom Energy's restatement of financial statements.

7 **IT IS THEREFORE STIPULATED AND AGREED** by Plaintiff, Defendants, and the
8 Underwriter Defendants that, subject to the Court's approval:

- 9 1. The parties' December 27, 2019 scheduling stipulation (Dkt No. 101) and the Court's
10 December 30, 2019 order granting that stipulation (Dkt No. 102) are vacated, and
11 Plaintiff's obligation to file a further amended complaint and the Defendants' and
12 Underwriter Defendants' obligation to respond to any of Plaintiff's complaints are
13 instead governed by the following provisions:
- 14 2. Plaintiff will file a Second Amended Complaint within 14 days of Bloom Energy's
15 forthcoming annual report on Form 10-K, which is expected to be released on or before
16 March 16, 2020;
- 17 3. Defendants and the Underwriter Defendants will either answer the Second Amended
18 Complaint or move to dismiss 45 days after the date on which Plaintiff files the Second
19 Amended Complaint;
- 20 4. If Defendants and the Underwriter Defendants move to dismiss the Second Amended
21 Complaint, Plaintiff will oppose the motions 45 days after the motions are filed; and
22 Defendants and the Underwriter Defendants will submit replies in further support of the
23 motions 30 days after Plaintiff files his opposition.

24 **IT IS SO STIPULATED.**

25 Date: March 9, 2020

By: /s/ Adam M. Apton

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12 *and Lead Counsel for the Class*

13 Date: March 9, 2020

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Attorneys for the Bloom Energy Defendants

1 Date: March 9, 2020

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11 *(USA) LLC, KeyBanc Capital Markets Inc.,*
12 *Merrill Lynch, Pierce, Fenner & Smith*
13 *Incorporated, Cowen & Company, LLC,*
14 *HSBC Securities (USA) Inc., Oppenheimer*
15 *& Co. Inc., Raymond James & Associates,*
16 *Inc., and Robert W. Baird & Co.*
17 *Incorporated*

1 **ORDER**

2 Pursuant to the parties' stipulation, and for good cause shown, IT IS SO ORDERED that:

- 3 1. The parties' previous scheduling stipulation (Dkt. No. 101) and the Court's order
4 granting that stipulation (Dkt. No. 102) are hereby VACATED;
- 5 2. Plaintiff will file a Second Amended Complaint within 14 days of Bloom Energy's
6 forthcoming annual report on Form 10-K, which is expected to be released on or before
7 March 16, 2020;
- 8 3. Defendants and the Underwriter Defendants will either answer the Second Amended
9 Complaint or move to dismiss 45 days after the date on which Plaintiff files the Second
10 Amended Complaint;
- 11 4. If Defendants and the Underwriter Defendants move to dismiss the Second Amended
12 Complaint, Plaintiff will oppose the motions 45 days after the motions are filed; and
13 Defendants and the Underwriter Defendants will submit replies in further support of
14 the motions 30 days after Plaintiff files his opposition.

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17 DATED: 3/10/2020

18 By: 
19 Hon. Haywood S. Gilliam, Jr.
20 United States District Judge
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